HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 5133 OF 2006

DATED: 27.03.2006

Between:

Tiyyagura Akki Reddy

… Petitioner

and

The Regional Joint Commissioner,

Endowments Department,

Multi zone-II, Tirupati and others

… Respondents

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 5133 OF 2006

ORAL ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader for Endowments.

The petitioner is aggrieved by the order of the 1st respondent dated 4.1.2006 in Appeal No.7 of 2004. The petitioner claims to be the cultivating tenant of a dry land in an extent of Ac.3.11 ½ cents in Sy.No.7 of Sri Yadavallivari Choultry, Kothapeta, Gunur, an endowment institution, for long. The petitioner claims to own and possess an extent of Ac.1.12 cents of dry land and no other property.

Claiming to be a small farmer and a landless poor person, the petitioner filed an application before the 3rd respondent, requesting recognition and determination as a landless poor person for availing the benefits under Section 82 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987. The 3rd respondent by the order dated 18.7.2003 rejected the petitioner's application for recognition and determination as a landless poor person. Aggrieved, the petitioner filed W.P.No.13969 of 2003 before this court. The writ petition is stated to have been disposed of with a direction to the 3rd respondent to re-enquire into the matter.

Thereafter, the 3rd respondent by another order dated 9.1.2004 rejected the petitioner's application and confirmed his earlier orders. Aggrieved thereby, the petitioner preferred an appeal to the 1st respondent being Appeal No.7 of 2004.

The petitioner pleads that on 4.1.2006, the date to which the appeal stood posted, the petitioner's counsel could not attend the appellate forum as the bus in which he was traveling had a breakdown. On the said date i.e. 4.1.2006, the 1st respondent dismissed the appeal on merits by an order which reads as under:

> *"This appeal was filed by the appellant challenging the very impugned orders passed by the Respondent-1 i.e., the Assistant*

Commissioner, Endowments Department, Guntur in Rc.No.A5/8820/2003 dated 9.1.2004, rejecting the application of the appellant in the matter of declaration of Landless poor person.

Sri Krishanamurthy Kalyanam, Advocate Guntur has appeared on behalf of the appellant. Sri Y. Sreenivasulu Naidu, Advocate Tirupati has filed vakalat and counter on behalf of the Respodnent-1 along with records. Heard from both the sides. . The Respondent-2 has submitted connected records. The Respondent-1 in his counter has stated that the appellant is not entitled for small farmer because he holding the land more than the extent as prescribed in the Act of 30/1987.

The appellant was not present on the date of final hearing i.e., on 17.7.2004. No representation. Perused the records. The Respondent-2 has correctly passed the impugned orders in Rc.No.A5/8820/2003 dated 9.1.2004 rejecting the application of the appellant for declaration of landless poor person. I do not find any merits in the appeal. In view of the above observations, the appeal is dismissed. However, without costs."

The order impugned is perverse. As the petitioner had not appeared, the 1st respondent could have dismissed the appeal for default. He could perhaps have even determined the appeal on merits, but then he is required to record reasons why the appeal is dismissed. Instead, the 1st respondent adopted a very curious quasi-judicial route namely; recording that the petitioner-appellant had sought recognition as a landless poor person; that the 1st respondent-the person in management had pleaded that the appellant was not entitled to be declared a small farmer since he was holding an extent of land which did not entitle him to be declared as such, and that the appellant-writ petitioner was not present on the date of the final hearing i.e. 17.7.2004 and therefore the appeal is dismissed as there were no merits in the appeal.

The order does not clearly show whether the appeal was dismissed on its merits or dismissed for non-prosecution. It is however recorded as having been dismissed on merits. The 1st respondent abdicated his statutory appellate responsibility by failing to record reasons why the petitioner was not entitled to be declared a small farmer. He failed to record a conclusion that the writ petitioner was

holding lands in excess and was therefore disentitled to the statutory benefits available to a small farmer. Such a wholly negligent and perverse exercise of appellate jurisdiction results in overloading this court.

For the aforesaid reasons, the impugned order dated 4.1.2006 cannot be sustained. It is accordingly set aside. As the 1st respondent has passed the appellate order negligently and without recording any reasons whatsoever for dismissing the appeal on merits, this court considers it appropriate to impose costs in an amount of Rs.2,500/-, which shall be paid by the 1st respondent to the petitioner, within a period of two weeks from the date of receipt of a copy of this order. Appeal No.7 of 2004 is remitted back to the 1st respondent for determination afresh, after notifying the petitioner of a date of hearing. If the first respondent now determines the appeal on merits, he is required to record reasons in support of the conclusions arrived at in disposing of the appeal.

The writ petition is allowed with costs as above at the stage of admission.

GODA RAGHURAM, J

Date: 27.03.2006

cvm